

**OFFICE OF ACQUISITION MANAGEMENT
HARPERS FERRY CENTER
ADMINISTRATIVE GUIDELINE NUMBER 2
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
FEBRUARY 2006**

I. BACKGROUND

This Administrative Guideline supplements the FAR Subparts 5, 6 and 13, Department of the Interior Acquisition Regulation (DIAR) Subpart 1406.3, Department of the Interior Acquisition Policy Release (DIAPR) 2001-3 and National Park Service (NPS) Contracting Officer's Technical Instruction (COTI) 1443.06.01 regarding contracting by other than full and open competition.

II. PURPOSE

The purpose of this Administrative Guideline is to provide the criteria for use in determining whether an acquisition may be made without competition. It describes the policy, responsibilities and justification documents required as well as the review and approval process.

III. POLICY

In accordance with FAR 13.202, micro-purchases (purchases \$2,500 or less) may be awarded without competition if the Contracting Officer considers the price to be reasonable; however, micro-purchases must be distributed equitably among qualified suppliers to the extent practicable.

Federal Acquisition Regulation 6.101 requires that competition be obtained *to the maximum extent possible* for all purchases over \$2,500; however, FAR 6.3 recognizes that there are circumstances where a supplier has exclusive or predominant capability by reason of experience, specialized facilities, or technical competence to perform without the need for competition. If this is the case, a justification for other than full and open competition is required and must be approved before a contract can be negotiated by the Contracting Officer with only one source.

Requesting offices should discuss requests which will require other than full and open competition with the Contracting Officer as early as possible during the acquisition planning stage, preferably before submitting the purchase request. Such discussions may resolve uncertainties, provide you with names of other sources, allow proper scheduling of the acquisition, and avoid delays that might otherwise occur should it be determined that other than full and open competition is not justified.

IV. RESPONSIBILITIES

The requesting office is responsible for preparing a justification for other than full and open competition when requesting to contract from only one source.

The contracting officer is responsible for evaluating the validity of the justification and conducting a market survey by publishing a sources sought notice in Federal Business Opportunities (FedBizOpps), or justifying why publication was precluded. If a market survey reveals that there is more than one qualified source, the Contracting Officer must issue a competitive solicitation. A response time of up to 45 days, from the date of publication of a notice of intent to contract is required, before beginning negotiations for the award of a contract without competition.

The Contracting Officer is also responsible for obtaining higher level approval as required by COTI 1443.6-01, legal review as required by DIAPR 2001-3, and certifying the accuracy and completeness of the justification.

V. CRITERIA

The seven circumstances, as authorized by Competition in Contracting Act, for which a justification can be considered by the Contracting Officer, are as follows:

A. ONLY ONE RESPONSIBLE SOURCE AND NO OTHER SUPPLIES OR SERVICES WILL SATISFY AGENCY REQUIREMENTS – (FAR 6.302-1)

Full and open competition need not be obtained when the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements. The justification for other than full and open competition must document clear and convincing evidence that only one source can meet the requirements. For justifications using this authority, a market survey accomplished by publishing the synopsis in FedBizOpps, or justifying why publication was precluded, must be a part of the contract file.

B. UNUSUAL AND COMPELLING URGENCY – (FAR 6.302-2)

Full and open competition need not be obtained when the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. This must be a life or death situation. This exemption has limited applicability to HFC requirements.

C. INDUSTRIAL MOBILIZATION; ENGINEERING, DEVELOPMENTAL, OR RESEARCH CAPABILITY; OR EXPERT SERVICES - (FAR 6.302-3)

Full and open competition need not be obtained when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization. This exemption has limited applicability to HFC requirements.

D. INTERNATIONAL AGREEMENT – (FAR 6.302-4)

Full and open competition need not be obtained when precluded by the terms of an international agreement or a treaty between the United States and a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government. The justification for other than full and open competition must provide appropriate references to the terms of the international agreement.

E. AUTHORIZED OR REQUIRED BY STATUTE – (FAR 6.302-5)

Full and open competition need not be obtained when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale. The justification for other than full and open competition must provide the appropriate statutory authority.

The following procurements expressly authorize or require the acquisitions be made from a specified source or through another agency: Federal Prison Industries, Qualified Nonprofit Agencies for the Blind or other Severely Disabled, Government Printing and Binding, 8(a) firms, Robert T. Stafford Disaster Relief and Emergency Assistance Act, HUBZone Act, and Veterans Benefits Act.

F. NATIONAL SECURITY – (FAR 6.302-6)

Full and open competition need not be obtained when the disclosure of the agency's needs would compromise national security, unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. This exemption has limited applicability to the HFC requirements.

G. PUBLIC INTEREST – (FAR 6.302-7)

Full and open competition need not be obtained when the agency head determines that it is not in the public interest in the particular acquisition concerned. Congress must be notified not less than 30 days before award. This authority can only be used when no other is applicable. This exemption has limited applicability to the HFC requirements.

VI. CONTENT

A justification for other than full and open competition must fully express what is to be procured and the reason why the requirement should not be competed. A justification must offer reasons that go beyond inconvenience and must explain why it is impossible to obtain competition. The justification must be documented with information that is based on facts and professional judgments rather than untested and unsubstantiated conclusions or opinions. Expiration of funds is not a justifiable reason.

The justification represents a recommendation based on your professional judgment. The contracting officer is responsible for reviewing the recommendation and ensuring that it complies with the intent of the regulations. The final decision and the accountability for the decision rests with the Contracting Officer. The better documented and prepared the justification is, the stronger the chances are that the contracting officer will approve the recommendation.

VII. FORMAT

- A. A justification for other than full and open competition in excess of \$2,500 must be a separate, self-contained document. The attached fillable form should be used to ensure that you cover all the necessary information.
- B. A justification must have three parts:
 - 1. Part I contains background information and a description of the requirement.
 - 2. Part II includes the facts and reasons to justify other than full and open competition. Each of the applicable criteria listed in Part II must be addressed and specific support for its use must be included. List any other sources you have considered for this contract.
 - 3. Part III includes a certification that the justification is accurate and complete to the best of your knowledge and belief. It also includes the signature of the Contracting Officer's Representative, Contracting Officer and others depending on the dollar value of the request.

It is always best to work with the Contracting Officer when faced with a particular project that requires use of a single source over \$2,500. He or she can assist you in making a determination as to whether contracting by other than full and open competition can be justified.

References

FAR Subpart 5.201 – <http://www.acqnet.gov/far>
FAR Subpart 6.101 – <http://www.acqnet.gov/far>
FAR Subpart 6.3 – <http://www.acqnet.gov/far>
FAR 13.202 – <http://www.acqnet.gov/far>
DIAR Subpart 1406.3 - <http://www.doi.gov/pam/1406b-3.html>
DIAPR 2001-3 - <http://www.doi.gov/pam/dpr2001-3.html>
NPS COTI 1443.06.01 – http://wcp.den.nps.gov/COTIs/1443_06_01.htm